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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,357		08/27/2003	Peter Borden Mackenzie	008111-172	3429
21839	7590	04/13/2005		EXAM	INER
BURNS DOANE SWECKER & MATHIS L L P			HARLAN, ROBERT D		
POST OFFIC	OST OFFICE BOX 1404 LEXANDRIA, VA 22313-1404			ART UNIT	PAPER NUMBER
ALEXANDI	KLA, VA	22313-1404		1713	-

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

•		
	Application No.	Applicant(s)
	10/648,357	MACKENZIE ET AL.
Office Action Summary	Examiner	Art Unit
	Robert D. Harlan	1713
The MAILING DATE of this communication a Period for Reply	ppears on the cover sheet w	ith the correspondence address
A SHORTENED STATUTORY PERIOD FOR REP THE MAILING DATE OF THIS COMMUNICATION - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a re - If NO period for reply is specified above, the maximum statutory perion - Failure to reply within the set or extended period for reply will, by state Any reply received by the Office later than three months after the mail earned patent term adjustment. See 37 CFR 1.704(b).	I. 1.136(a). In no event, however, may a eply within the statutory minimum of third will apply and will expire SIX (6) MOR ute, cause the application to become Al	reply be timely filed ty (30) days will be considered timely. NTHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).
Status		
1) Responsive to communication(s) filed on 18	March 2005.	
	nis action is non-final.	
3) Since this application is in condition for allow	vance except for formal mat	ters, prosecution as to the merits is
closed in accordance with the practice under	r <i>Ex parte Quayl</i> e, 1935 C.D	D. 11, 453 O.G. 213.
Disposition of Claims		
4)⊠ Claim(s) <u>1-41</u> is/are pending in the application	on.	
4a) Of the above claim(s) <u>15-34 and 37-41</u> is		eration.
5) Claim(s) is/are allowed.		
6)⊠ Claim(s) <u>1-14,35 and 36</u> is/are rejected.		
7) Claim(s) is/are objected to.		
8) Claim(s) are subject to restriction and	l/or election requirement.	
Application Papers		
9)☐ The specification is objected to by the Exami	ner.	
10)☐ The drawing(s) filed on is/are: a)☐ ad	ccepted or b) objected to	by the Examiner.
Applicant may not request that any objection to the	= : :	, ,
Replacement drawing sheet(s) including the corre		• • • • • • • • • • • • • • • • • • • •
11) The oath or declaration is objected to by the	Examiner. Note the attache	d Office Action or form PTO-152.
Priority under 35 U.S.C. § 119		
12) Acknowledgment is made of a claim for foreignal All b) Some * c) None of: 1. Certified copies of the priority docume		§ 119(a)-(d) or (f).
2. Certified copies of the priority docume		application No.
3.☐ Copies of the certified copies of the pr		
application from the International Bure		-
* See the attached detailed Office action for a list	st of the certified copies not	received.
uttachment(s)		
_ ``	4) Intensions	Summary (PTO-413)
Motice of References Cited (P10-892)	4) (III(C) VIEW :	
) Notice of References Cited (PTO-892)) Notice of Draftsperson's Patent Drawing Review (PTO-948)) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/0	Paper No(s)/Mail Date nformal Patent Application (PTO-152)

Application/Control Number: 10/648,357

Art Unit: 1713

DETAILED ACTION

Page 2

Election/Restrictions

- 1. Applicant's election with traverse of claims 1-14 and 35-36 in the reply filed on 03/18/05 is acknowledged. The traversal is on the ground(s) that searches for the groups would be coextensive. This is not found persuasive because, as stated in the restriction requirement, the groups involve different search classifications and the catalyst may be used for something other than olefin polymerizations.
- 2. The requirement is still deemed proper and is therefore made FINAL.
- 3. This application contains claims drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Art Unit: 1713

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- 5. Claims 1-14 and 35-36 rejected under 35 U.S.C. 102(a) as being anticipated by Moody et al., U.S. Patent No. 6,559,091 (hereinafter "Moody"). See Moody, Abstract; Claims.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Application/Control Number: 10/648,357 Page 4

Art Unit: 1713

7. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

- 8. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
- 9. Claims 1-14 and 35-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all the claims of U.S. Patent No. 6,559,0901. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims bare a species-generic relationship to the claims in U.S. Patent No. 6,559,0901.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D.

Application/Control Number: 10/648,357

Art Unit: 1713

Harlan whose telephone number is (571) 272-1102. The examiner can normally be reached on Mon-Fri, 10 AM - 8 PM.

- 11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 273-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
- 12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert D. Harlan Primary Examiner Art Unit 1713 Page 5

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